

AGENDA ITEM#

January 10, 2003

To: Delta Protection Commission

From: Margit Aramburu, Executive Director

Subject: San Rafael Rock Quarry and Pending Lawsuits
(*For Commission Consideration and Possible Action*)

BACKGROUND:

At the November 2002 meeting, during the Public Comments segment of the agenda, Tom Zuckerman, co-counsel of the Central Delta Water Agency, spoke to the Commission about State and local lawsuits pending against the owners of the San Rafael Rock Quarry (Marin County), owned by San Rafael Rock Quarry, Inc (a subsidiary of The Dutra Group). At the meeting, he asked that the Commission schedule further consideration of the lawsuit and its possible impacts to long term maintenance of the Delta levees. The San Rafael Rock Quarry is one of the main sources of rock (riprap) used to maintain the Delta levees.

HISTORY OF THE QUARRY:

The Quarry has been operating at the current 750-acre land and water-covered site on the shoreline of Richardson Bay near San Rafael since the mid-1800s. The site was first quarried for clay and shale to manufacture bricks, and later sandstone and shale for aggregates and concrete. Currently the Quarry produces asphaltic concrete, rock, concrete aggregate, sand, and riprap. The Quarry has the only waterside distribution center in the Bay Area which allows materials to be distributed by barge and floating equipment (Source: Marin County Community Development Agency Staff Report to Planning Commission dated March 27, 2000).

The use existed prior to adoption of the County's first Zoning Ordinance in 1941. In 1971, the County adopted an ordinance regulating surface mining and quarry operations and in 1972 approved a Quarry Use Permit for the existing Quarry. In 1976, the State adopted the Surface Mining and Reclamation Act that requires a Reclamation Plan for each quarry to be filed with and approved by the County. A Reclamation Plan was filed in 1976, but never forwarded to the Planning Commission for approval. In 1981, the previous owners modified the Reclamation Plan and in 1982, the Board of Supervisors rezoned the property from Heavy Industrial to Bayfront Conservation, Residential, Commercial Multiple Planning District. This change would allow development of the site after the quarry activities ceased. At that time, the owners estimated quarrying would cease in 17 years (1993). The revised Reclamation Plan was approved in 1982. The Quarry was transferred to Dutra Construction Company in 1986.

Adjacent land uses include single and multiple family residential and County-owned McNears Beach Park.

The State Department of Conservation designates the Quarry as a deposit site for regionally significant mineral resources for the North Bay Area, and classified as a Mineral Resources Zone, Class 2 designation (MRZ-2A), the highest category for known mineral resource deposits.

MARIN COUNTY ISSUES:

Marin County has identified issues associated with non-compliance with the approved Reclamation Plan (depth of excavation, financial assurances, and level of truck activity) and unauthorized placement and use of structures on the site. In addition, residents in the surrounding neighborhood, the City of San Rafael and the County's Parks and Open Space District have complained about hours of operation, truck traffic, noise, dust, and blasting. The Quarry was cited in January 2000. A new erosion control plan was approved in 2001 (Department of Public Works, Planning Commission and Board of Supervisors). A Grand Jury report on the Quarry was filed in June 2001. In September 2001, County of Marin filed suit alleging numerous zoning violations. Neighbors also filed suit against the Quarry.

STATE OF CALIFORNIA ISSUES:

In September 2001, the Attorney General filed suit in Marin County Superior Court against San Rafael Rock Quarry, Inc. alleging that the quarry is a nuisance and is operating unlawfully in violation of the State Unfair Competition Law. The latter violation stems from the Quarry's violation of local zoning ordinances.

STATUS OF THE LAWSUITS:

The suits allege the Quarry is operating in excess of its legal entitlements and creating a public nuisance by generating harmful dust, excessive noise and traffic congestion. The suits seek orders to force the Quarry to either cease or dramatically scale back its operations.

Four filed lawsuits were consolidated by the Superior Court Judge. On Friday, December 13, 2002, the Judge denied cross-motions for summary adjudication on the Unfair Competition Law issues. The Court ruled that it is not clear at this point whether the Quarry is in violation of local zoning ordinances. The parties have four months to conduct discovery and report back to the Court. The status conference is scheduled for April 2, 2003.